

FULL FORCE AND EFFECT DECISION RECORD

DETERMINATION OF NEPA ADEQUACY (DNA) FOR THE HIGHWAY FUELBREAK EXTENSION PROJECT DOI-BLM-NV-WO10-2013-0033-DNA

Introduction

Travel corridors, US highways and state routes, have some of the highest incidences of human-caused fire in the Winnemucca District. Highway fuelbreaks were implemented along these corridors to help prevent the spread of fires off right-of-ways and into wildland vegetation. The existing highway disking fuelbreaks are the most effective fuelbreaks in the Winnemucca District (Fuels Treatment Effectiveness Monitoring Database 2013). In 2012 alone, five fires were prevented from spreading outside of the highway right-of-way and several others were used for anchor points by suppression resources. Due to a recent expansion of cheatgrass along some highways and routes and subsequent occurrence of fires, it was determined that extending the length of current fuelbreaks would result in a more effective fire defense system to protect important wildlife habitat, municipal watersheds and communities-at-risk.

The Bureau of Land Management (BLM) fire management program requested to extend the length of the existing highway disking fuelbreaks along State Routes 140 and US Highway 95 and to provide maintenance of these fuelbreaks. The BLM also requested flexibility to maintain all highway fuelbreaks (i.e., including State Routes 140 and 447) using a disking implement at any time of the year, if necessary, to maintain effectiveness. The fuelbreak extensions would be created by mowing and/or disking a strip of ground 12-16 feet in width and 4-12 inches in depth. The disking lines would be generally located inside, and adjacent to, the edge of the existing fence line which delineates the boundary of the Nevada Department of Transportation (NDOT) rights-of-way. All areas of proposed disturbance would be within the highway rights-of-way and have been previously disturbed. Maintenance treatments might include disking, mowing, seeding or chemical application.

Compliance/Conformance

Implementation of the proposed action complies with requirements of the Endangered Species Act, National Historic Preservation Act, and the Clean Water Act. The proposed action is in conformance with the Paradise-Denio Management Framework Plan (MFP), July 1982. The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP objective:

Fire F-1 Objective:

“To minimize the wildfire damage to life, property, and resources.”

The Determination of NEPA Adequacy (DNA) for DOI-BLM-NV-WO10-2013-0033-DNA is tiered to the following documents:

- 1) Highway Disking and Herbicide Treatment, DOI-BLM-NV-WO10-2009-0006-EA
- 2) Highway Fuelbreak Herbicide Treatment Environmental Assessment, NV-020-05-EA-20
- 3) Herbicide Application for Control of Noxious Weeds Environmental Assessment, NV-020-99-10
- 4) Integrated Weed Management Environmental Assessment, NV020-02-19
- 5) Vegetation Treatment Using Herbicide on Bureau of Land Management Lands in Seventeen Western States Programmatic EIS, FES-07-21

Decision

It is my decision to authorize the implementation and maintenance of fuelbreaks along state routes and highways within the Winnemucca District as described in the Determination of NEPA Adequacy (DNA). This decision is subject to implementation of proposed mitigation and monitoring measures identified in the proposed action and Standard Operating Procedures identified in the DNA and listed in this decision in “Protection Measures/Mitigation” section. The decision to implement the fuel break extensions and annual maintenance immediately relies on authority under the Healthy Forests Restoration Act and associated BLM regulations under 43 CFR 5003.1(b). This project meets the determination requirement as an authorized project covered by the act, as the project enhances protection from wildland fire for Threatened and Endangered (T&E) species and their habitat.

This decision implements construction and maintenance of fuelbreaks within existing highway right-of-ways. A full analysis of these actions was considered previously in Environmental Assessment (EA), Highway Disking and Herbicide Treatment (DOI-BLM-NV-WO10-2009-0006-EA).

The extension on State Route 140 would occur on the west/south side of highway for 13.5 miles from Quinn River Maintenance Station (mile marker, MM: 51.5) to Ninemile Road (MM: 38), then both sides of the highway from MM 36.5 to Coyote Point Road (MM: 27) for 9.7 miles. The extension on US Highway 95 would occur from the Humboldt County Landfill Road (MM: 4) to the Sand Pass Road (MM: 11). The total length would be less than 7 miles; a few sections with sand dunes would be bypassed.

The fuelbreaks would occur within the existing highway right-of-way.

Work will be completed by the following methods:

Mechanical Treatment

A rotary mower, disk or other appropriate implement will be used to remove vegetation from project locations. Use of a rotary mower in conjunction with disking will occur in the proposed fuelbreak extensions. Implements will be pulled by rubber tired/tracked farm type tractors or a dozer.

Herbicide Treatment

The herbicides Imazapic, Glyphosate, or other BLM authorized herbicide will be used to remove undesirable vegetation and hazardous fuels and control the growth of annual species such as cheatgrass, tumble mustard, and Russian thistle.

Herbicides will be applied in the fall, winter or early spring by aircraft, truck, or ATV; herbicide may also be applied with crews utilizing backpack pumps to spray noxious weeds or annual invasive species.

Protective Measure/Mitigation

In addition to the Standard Operating Procedures and Best Management Practices contained in Appendix A of the Vegetation Treatment Using Herbicide on Bureau of Land Management Lands in Seventeen Western States Programmatic EIS, Record of Decision (2007), the following safety and standard operating procedures would also apply:

1. The standard Safety Procedures and Standard Operating Procedures found in Appendix I of the Highway Disking and Herbicide Treatments Environmental Assessment (DOI-BLM-NV-WO10-2009-0006-EA, Decision May 2009) would be strictly followed.
2. The Nevada Department of Transportation (NDOT) would be given the opportunity to review and comment on any proposed actions.
3. Label directions would be strictly followed. In Nevada, all herbicides used, are currently registered by the Environmental Protection Agency (EPA), for use on pasture, forest land, and rangeland. Any treatment across adjoining state lines would meet both states requirements.
4. Prior to any chemical treatment, areas would be evaluated for the presence of riparian areas, special status plants and animals and to determine if they fall within an ACEC. No ground application (truck mounted sprayer or backpack) would be done within 50 yards of any sensitive or threatened species.
5. Re-applications of the herbicide would not be less than the persistence factor identified for the herbicide.
6. Ground application of herbicides (including backpack and power sprayer) would be limited to spraying the target area. Truck mounted and backpack application of liquids would occur only at low nozzle pressure.
7. Ground application of liquids would not occur when wind speeds exceed 10 mph. The certified pesticide applicator would monitor for wind speed and herbicide drift at all control sites near surface waters through the use of drift cards. If the drift cards detect a positive herbicide presence in the buffer zone, spraying would be stopped immediately and monitoring would be initiated.
8. The use of herbicides near water would be based on the buffer requirements established in the BLM Chemical Pest Control Manual Handbook H-9011-1; distance from water (in

horizontal feet) would be as follows: 10 feet backpack, 50 feet vehicle mounted sprayer of liquids.

9. Two weeks before herbicides are applied, the tribal council of the Fort McDermitt Paiute and Shoshone Reservation would be notified of when, where and how herbicides would be applied.

In addition to the Standard Operating Procedures listed above the following environmental measures are components of the proposed action and would be implemented.

1. During any phase of implementation by contractor, a certified BLM Contracting Officers Representative (COR) or Project Inspector (PI) would be on site ensuring all SOP and mitigation actions are followed.
2. When applying herbicide, a buffer zone of fifty (50) feet (when applying by vehicle), and ten (10) feet (when applying by backpack) would be applied around any water sources.
3. Herbicidal application rate (range of rates) and application would be subject to label restricting and standard operating procedures.
4. Land clearing or other surface disturbance associated with the proposed action would be conducted outside of the migratory avian breeding season, whenever feasible, to avoid potential destruction of active bird nests. Nests are considered active if they contain eggs or young or if evidence of reproductive behavior (i.e. mated pairs, courtship displays, territorial defense, carrying nesting materials, transporting food, etc.) is observed (MBTA 1918). When surface disturbance must be created during the migratory avian breeding season, (March 1 – August 31), a survey performed by a BLM biologist, or their representative, would be conducted for active nests. This survey would be conducted no more than ten (10) days prior to and no less than one (1) day prior to proposed disturbance activities. If active nests are located, disturbance activities may be postponed, a protective buffer may be established, or other appropriate protective measures would be instituted to avoid disturbance to the nest or reproductive behaviors until the nests are no longer active. The start and end dates of the seasonal restriction may be based upon site-specific information such as species present, elevation, and weather patterns which affect breeding chronology.
5. Areas containing cultural resources determined to be eligible for inclusion into the National Register would be avoided.

Public Outreach/Involvement

A 30 day scoping period was held for the Hwy Disking/Herbicide EA (i.e., the tiered document) in January of 2009. No comments were received. NDOT, which has jurisdiction on transportation right-of-ways, was consulted numerous times regarding this proposed project in the fall of 2012 and spring of 2013. A formal letter describing the proposed project was sent to NDOT on 21 February 2013 and a meeting was held on 12 March 2013.

Consultation

Letters requesting consultation were sent to the following tribes in March 2009: Fort McDermitt Paiute and Shoshone Tribe, Winnemucca Indian Colony, Pyramid Lake Paiute Tribe and Summit Lake Paiute Tribe. No comments were received. Notification of any herbicide application would be sent to the McDermitt Paiute and Shoshone Tribe two weeks prior to application (see section *Protection Measures/Mitigation*).

Rationale (*In accordance with 43 CFR 5003.1 (b)*).

In summary: the BLM has determined that vegetation on public lands within the District is at substantial risk of wildfire due to past fire history, drought and invasive annual weeds. Wildland-urban interface areas and important wildlife habitat are located adjacent to highways identified in the proposed action. The actions identified will reduce the risk of a catastrophic wildfire and the potential succession of native plant communities to invasive annual grasslands.

A.) Implementation of the proposed action will protect sensitive species and threatened or endangered (T&E) species habitat, protect municipal watersheds and provide for public safety. All treatments identified will be in accordance with the Instruction memorandums WO-IM-2012-043 Greater Sage-Grouse Interim Management Policies and Procedures and WO-IM-2011-138 Sage-grouse Conservation Related to Wildland Fire and Fuels Management.

B.) The selected action is designed to limit the spread of wildfire, and most treatments target the reduction of invasive annual species. Invasive annuals such as cheat grass provide continuity of fuels, increase rates of spread, and increase fire-line intensity. Maintenance of these treatments targets reduction in annual species production.

C.) The selected action will not adversely affect cultural resources. Class III Cultural Inventories have been completed for all selected action. All NRHP eligible or unevaluated sites will be avoided during the course of this fuels project.

D.) The treatments provide for public safety, and protection of property and infrastructure.

E.) Treatments are designed to provide fuel breaks to assist in keeping fires at the minimum acreage possible while reducing to a practical extent the acreage impacted by treatments.

The BLM has complied with the requirements of NEPA through the preparation of the DNA and tiered EA. There were no “significant” impacts identified in the EA analysis which would require the preparation of an EIS. The decision to implement the proposed action of the DNA was based on several considerations:

- 1) The proposed action is essentially similar to the proposed action analyzed in DOI-BLM-NV-WO10-2009-0006-EA and the project in within the analysis area and with conditions similar to those previously analyzed.
- 2) The range of alternatives analyzed in the existing NEPA document was

- appropriate with respect to the new proposed action.
- 3) The existing analysis was still valid and no new conditions or circumstances would change the analysis of the new proposed action.
 - 4) The direct, indirect, and cumulative effects that would result from implementation of the new proposed action were similar to those analyzed in the existing NEPA document (i.e., DOI-BLM-NV-WO10-2009-0006-EA).
 - 5) The level of public involvement and interagency review associated with existing NEPA documents were adequate for the current proposed action.

Appeal

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to Werner Graham, Field Manager, Humboldt River Field Office, Winnemucca District Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the serial number or other identification of the case and may include a statement of reasons for the appeal, a statement of standing if required by § 4.412(b), and any arguments the appellant wishes to make. Attached Form 1842-1 provides additional information regarding filing an appeal.

No extension of time will be granted for filing a notice of appeal. If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401(a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

Pursuant to 43 CFR 4.47I(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted;
and,
- 4) Whether the public interest favors granting the stay.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

/s/ Vern Graham
Werner Graham, Field Office Manager

6/4/13
Date